

Senate Study Bill 1125

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
NATURAL RESOURCES BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating the uniform environmental covenants Act.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
3 TLSB 1619DP 81
4 tm/gg/14

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1 1 Section 1. Section 455B.103, Code 2005, is amended by
1 2 adding the following new subsection:
1 3 NEW SUBSECTION. 7. At the discretion of the director,
1 4 enter into environmental covenants in accordance with chapter
1 5 455L and accept, maintain, or transfer such other real
1 6 property interests as shall be appropriate for the protection
1 7 of human health and safety or the environment.

1 8 Sec. 2. Section 455B.474, subsection 1, paragraph f,
1 9 subparagraph (4), subparagraph subdivision (f), Code 2005, is
1 10 amended to read as follows:

1 11 (f) Other relevant site specific factors such as the
1 12 feasibility of available technologies, existing background
1 13 contaminant levels, current and planned future uses,
1 14 ecological, aesthetic, and other relevant criteria, and the
1 15 applicability and availability of engineering and
1 16 institutional controls, including an environmental covenant as
1 17 established by chapter 455L.

1 18 Sec. 3. Section 455H.103, Code 2005, is amended by adding
1 19 the following new subsection:

1 20 NEW SUBSECTION. 7A. "Environmental covenant" means a
1 21 servitude arising under an environmental response project that
1 22 imposes activity and use limitations as defined in section
1 23 455L.2.

1 24 Sec. 4. Section 455H.206, subsections 2, 3, 4, 5, and 6,
1 25 Code 2005, are amended to read as follows:

1 26 2. An institutional or technological control includes any
1 27 of the following:
1 28 a. A state or federal law or regulation.
1 29 b. An ordinance of any political subdivision of the state.
1 30 c. A contractual obligation recorded and executed in a
1 31 manner satisfying chapter 558.
1 32 d. A control which the participant can demonstrate reduces
1 33 or manages the risk from a release through the period
1 34 necessary to comply with the applicable standards.
1 35 e. An environmental protection easement filed prior to the
2 1 effective date of this Act.

2 2 f. An environmental covenant created in accordance with
2 3 chapter 455L.

2 4 3. If the department's determination of compliance with
2 5 applicable standards pursuant to subchapter 3 is conditioned
2 6 on a restriction in the use of any real estate in the affected
2 7 area, the participant must utilize an institutional control.
2 8 If the restriction in use is to limit the use to
2 9 nonresidential use, the participant must use an environmental
2 10 ~~protection easement covenant~~ as the institutional control.
2 11 Environmental ~~protection easements covenants~~ covenants may also be used
2 12 to implement other institutional or technological controls.
2 13 An environmental ~~protection easement must be granted by the~~
2 14 ~~fee title owners of the relevant real estate. The participant~~
2 15 ~~shall furnish to the department abstracts of title and other~~
2 16 ~~documents sufficient to enable the department to determine~~
2 17 ~~that the easements will be enforceable. An environmental~~
2 18 ~~protection easement shall be in a form provided by rule of the~~

2 19 department. An environmental protection easement must provide
2 20 all of the following:

- 2 21 a. ~~The easement names the state, acting through the~~
2 22 ~~department, as grantee.~~
2 23 b. ~~The easement identifies the activity either being~~
2 24 ~~restricted or required through the institutional or~~
2 25 ~~technological control.~~
2 26 c. ~~The easement runs with the land, binding the owner of~~
2 27 ~~the land and the owner's successors and assigns.~~
2 28 d. ~~The easement shall include an acknowledgment by the~~
2 29 ~~director of acceptance of the easement by the department.~~
2 30 e. ~~The easement is filed in the office of the recorder of~~
2 31 ~~the county in which the real estate is located and in any~~
2 32 ~~central registry which may be created by the director covenant~~
2 33 ~~must comply with the requirements of chapter 455L.~~

2 34 4. If the use of an institutional or technological control
2 35 is confirmed in a no further action letter issued pursuant to
3 1 section 455H.301, the institutional or technological control
3 2 may be enforced in district court by the department, a
3 3 political subdivision of this state, the participant, or any
3 4 successor in interest to the participant. ~~An environmental~~
3 5 ~~protection easement granted pursuant to subsection 3 shall be~~
3 6 ~~enforceable in perpetuity notwithstanding sections 614.24~~
3 7 ~~through 614.38. After the recording of the easement, each~~
3 8 ~~instrument transferring an interest in the area affected by~~
3 9 ~~the easement shall include a specific reference to the~~
3 10 ~~recorded easement. If a transfer instrument fails to include~~
3 11 ~~a specific reference to the recorded easement, the transferor~~
3 12 ~~may lose any of the benefits provided by this chapter.~~

3 13 5. An institutional or technological control, except for
3 14 an environmental protection easement covenant, may be removed,
3 15 discontinued, modified, or terminated by the participant or a
3 16 successor in interest to the participant upon a demonstration
3 17 that the control no longer is required to assure compliance
3 18 with the applicable standard. Upon review and approval by the
3 19 department, the department shall issue an amendment to its no
3 20 further action letter approving the removal, discontinuance,
3 21 modification, or termination of an institutional or
3 22 technological control which is no longer needed.

3 23 6. ~~An environmental protection easement granted covenant~~
3 24 ~~created pursuant to subsection 3 may be released terminated or~~
3 25 ~~amended only by a release or amendment of the easement~~
3 26 ~~executed by the director and filed with the county recorder in~~
3 27 ~~accordance with chapter 455L. The department may determine~~
3 28 ~~that any person who intentionally violates an environmental~~
3 29 ~~protection easement covenant or other technological or~~
3 30 ~~institutional control contained in a no further action letter~~
3 31 ~~loses any of the benefits provided by this chapter as to the~~
3 32 ~~affected area. In the event the technological or~~
3 33 ~~institutional controls fail to achieve compliance with the~~
3 34 ~~applicable standards, the participant shall undertake an~~
3 35 ~~additional response action sufficient to demonstrate to the~~
4 1 ~~department compliance with applicable standards. Failure to~~
4 2 ~~proceed in a timely manner in performing the additional~~
4 3 ~~response action may result in termination of the participant's~~
4 4 ~~enrollment in the land recycling program.~~

4 5 Sec. 5. NEW SECTION. 455L.1 TITLE.

4 6 This chapter shall be known and cited as the "Uniform
4 7 Environmental Covenants Act".

4 8 Sec. 6. NEW SECTION. 455L.2 DEFINITIONS.

4 9 As used in this chapter, unless the context otherwise
4 10 requires:

4 11 1. "Activity and use limitations" means restrictions or
4 12 obligations created under this chapter with respect to real
4 13 property. "Activity and use limitations" may include, but is
4 14 not limited to, restrictions on installation of water wells
4 15 and other exposure receptors, construction of surface and
4 16 subsurface structures, disturbance of and maintenance of soil
4 17 caps and technological controls, and land use classifications
4 18 such as residential, nonresidential, or industrial.

4 19 2. "Agency" means the department of natural resources
4 20 created by section 455A.2 or any other state department or
4 21 federal agency that determines or approves the environmental
4 22 response project pursuant to which an environmental covenant
4 23 is created.

4 24 3. "Common interest community" means a condominium,
4 25 cooperative, or other real property with respect to which a
4 26 person, by virtue of the person's ownership of a parcel of
4 27 real property, is obligated to pay property taxes or insurance
4 28 premiums for, or for maintenance or improvement of, other real
4 29 property described in a recorded covenant that creates the

4 30 common interest community.

4 31 4. "Environmental covenant" means a servitude arising
4 32 under an environmental response project that imposes activity
4 33 and use limitations or the written document creating such
4 34 servitude.

4 35 5. "Environmental response project" means a plan or work
5 1 performed for environmental remediation affecting real
5 2 property or protecting ecological features associated with
5 3 real property and conducted under or by one of the following:
5 4 a. A federal or state program that is subject to the
5 5 jurisdiction of an agency, including but not limited to
5 6 programs established by chapters 455B and 445G, corrective or
5 7 response actions pursuant to 42 U.S.C. } 6901 et seq., and
5 8 remedial actions under 42 U.S.C. } 9601 et seq.

5 9 b. A federal or state program for the replacement or
5 10 protection of ecological features including wetlands.

5 11 c. A state voluntary cleanup program authorized in chapter
5 12 455H.

5 13 d. An incident to a closure conducted with approval of an
5 14 agency of a solid or hazardous waste management unit, a
5 15 sanitary disposal project, or an underground storage tank.

5 16 e. A person on real estate owned by that person.

5 17 6. "Grantor" means any person with sufficient fee title
5 18 and other property ownership interests necessary to create a
5 19 valid environmental covenant under Iowa law.

5 20 7. "Holder" means the grantee of an environmental covenant
5 21 as specified in section 455L.3, subsection 1.

5 22 8. "Person" means an individual, corporation, business
5 23 trust, estate, trust, partnership, limited liability company,
5 24 association, joint venture, public corporation, government,
5 25 governmental subdivision, agency, or instrumentality, or any
5 26 other legal or commercial entity.

5 27 9. "Record", used as a noun, means information that is
5 28 inscribed on a tangible medium or that is stored in an
5 29 electronic or other medium and is retrievable in perceivable
5 30 form.

5 31 Sec. 7. NEW SECTION. 455L.3 NATURE OF RIGHTS ==
5 32 SUBORDINATION OF INTERESTS.

5 33 1. Any person, including a person that owns an interest in
5 34 the real property, an agency, or a municipality or other unit
5 35 of local government, may be a holder. An environmental
6 1 covenant may identify more than one holder. The interest of a
6 2 holder is an interest in real property.

6 3 2. A right of an agency under this chapter or under an
6 4 environmental covenant, other than a right as a holder, is not
6 5 an interest in real property.

6 6 3. An agency is bound by any obligation it assumes in an
6 7 environmental covenant, but an agency does not assume
6 8 obligations merely by signing an environmental covenant. Any
6 9 other person that signs an environmental covenant is bound by
6 10 the obligations the person assumes in the environmental
6 11 covenant, but signing the environmental covenant does not
6 12 change obligations, rights, or protections granted or imposed
6 13 under law or administrative action other than this chapter
6 14 except as provided in the environmental covenant.

6 15 4. The following rules apply to interests in real property
6 16 in existence at the time an environmental covenant is created
6 17 or amended:

6 18 a. An interest that has priority under other law is not
6 19 affected by an environmental covenant unless the person that
6 20 owns the interest subordinates that interest to the
6 21 environmental covenant.

6 22 b. This chapter does not require a person that owns a
6 23 prior interest to subordinate that interest to an
6 24 environmental covenant or to agree to be bound by the
6 25 environmental covenant.

6 26 c. A subordination agreement may be contained in an
6 27 environmental covenant covering real property or in a separate
6 28 record. If the environmental covenant covers commonly owned
6 29 property in a common interest community, the covenant or
6 30 record may be signed by any person authorized by the governing
6 31 board of the owners' association.

6 32 d. An agreement by a person to subordinate a prior
6 33 interest to an environmental covenant affects the priority of
6 34 that person's interest but does not by itself impose any
6 35 affirmative obligation on the person with respect to the
7 1 environmental covenant.

7 2 Sec. 8. NEW SECTION. 455L.4 CONTENTS OF ENVIRONMENTAL
7 3 COVENANT.

7 4 1. An environmental covenant shall contain all of the
7 5 following:

7 6 a. A statement that the instrument is an environmental
7 7 covenant executed pursuant to this chapter.
7 8 b. A legally sufficient description of the real property
7 9 subject to the environmental covenant.
7 10 c. A description of the activity and use limitations on
7 11 the real property.
7 12 d. The identity of every holder and grantor.
7 13 e. A signature by the grantor, the agency unless it is an
7 14 environmental response project as defined in section 455L.2,
7 15 subsection 5, paragraph "e", every holder, and, unless waived
7 16 by the agency, every owner in fee simple of the real property
7 17 subject to the environmental covenant.
7 18 f. Identification of the name and location of any final
7 19 agency action decision documents for the environmental
7 20 response project reflected in the environmental covenant.
7 21 g. The rights of access to the real property granted in
7 22 connection with implementation or enforcement of the
7 23 environmental covenant.

7 24 2. In addition to the information required in this
7 25 section, an environmental covenant may contain other
7 26 information, restrictions, and requirements agreed to by the
7 27 persons who sign the environmental covenant, including any of
7 28 the following:

7 29 a. Requirements for periodic reporting describing
7 30 compliance with the environmental covenant.
7 31 b. Requirements for notice to an agency following transfer
7 32 of a specified interest in, or concerning proposed changes in
7 33 use of, applications for building permits for, or proposals
7 34 for any site work affecting the contamination on, the real
7 35 property subject to the environmental covenant.

8 1 c. A brief narrative description of the contamination and
8 2 remedy, including the contaminants of concern, the pathways of
8 3 exposure, limits on exposure, and the location and extent of
8 4 the contamination.
8 5 d. Limitations on amendment or termination of the
8 6 environmental covenant in addition to those contained in
8 7 sections 455L.9 and 455L.10.
8 8 e. Rights of the holder in addition to the holder's right
8 9 to enforce the environmental covenant pursuant to section
8 10 455L.11.

8 11 3. In addition to other conditions for its approval of an
8 12 environmental covenant authorized by law, an agency may
8 13 require those persons specified by the agency who have
8 14 interests in the real property to sign the environmental
8 15 covenant.

8 16 Sec. 9. NEW SECTION. 455L.5 VALIDITY == EFFECT ON OTHER
8 17 INSTRUMENTS.

8 18 1. An environmental covenant that complies with this
8 19 chapter runs with the land.
8 20 2. An environmental covenant that is otherwise effective
8 21 is valid and enforceable even if any of the following applies
8 22 to the environmental covenant:

8 23 a. The environmental covenant is not appurtenant to an
8 24 interest in real property.
8 25 b. The environmental covenant can be or has been assigned
8 26 to a person other than the original holder.
8 27 c. The environmental covenant is not of a character that
8 28 has been recognized traditionally at common law.
8 29 d. The environmental covenant imposes a negative burden.
8 30 e. The environmental covenant imposes an affirmative
8 31 obligation on a person having an interest in the real property
8 32 or on the holder.
8 33 f. The benefit or burden does not touch or concern real
8 34 property.
8 35 g. There is no privity of estate or contract.
9 1 h. The holder dies, ceases to exist, resigns, or is
9 2 replaced.
9 3 i. The owner of an interest subject to the environmental
9 4 covenant and the holder are the same person.

9 5 3. An instrument that creates restrictions or obligations
9 6 with respect to real property that would qualify as activity
9 7 and use limitations except for the fact that the instrument
9 8 was recorded before the effective date of this chapter is
9 9 valid and enforceable and is not rendered invalid or
9 10 unenforceable based upon any of the potential limitations on
9 11 enforcement of interests described in subsection 2 or because
9 12 it was identified as an easement, servitude, deed restriction,
9 13 or other interest. This chapter does not apply in any other
9 14 respect to such an instrument.
9 15 4. This chapter does not invalidate or render
9 16 unenforceable any interest, whether designated as an

9 17 environmental covenant or other interest, that was created
9 18 prior to the enactment of this chapter or that is otherwise
9 19 enforceable under the laws of this state.
9 20 Sec. 10. NEW SECTION. 455L.6 RELATIONSHIP TO OTHER LAND=
9 21 USE LAW.
9 22 This chapter does not authorize a use of real property that
9 23 is otherwise prohibited by zoning, by law other than this
9 24 chapter regulating use of real property, or by a recorded
9 25 instrument that has priority over the environmental covenant.
9 26 An environmental covenant may prohibit or restrict uses of
9 27 real property which are authorized by zoning or by law other
9 28 than this chapter.
9 29 Sec. 11. NEW SECTION. 455L.7 NOTICE.
9 30 1. A copy of a recorded environmental covenant shall be
9 31 provided to each of the following in the manner required by an
9 32 agency unless it is an environmental response project as
9 33 defined in section 455L.2, subsection 5, paragraph "e":
9 34 a. Each person that signed the environmental covenant.
9 35 b. Each person holding a recorded interest in the real
10 1 property subject to the environmental covenant.
10 2 c. Each person in possession of the real property subject
10 3 to the environmental covenant.
10 4 d. Each municipality or other unit of local government in
10 5 which real property subject to the environmental covenant is
10 6 located.
10 7 e. Any other person the agency requires.
10 8 2. The validity of an environmental covenant is not
10 9 affected by failure to provide a copy of the environmental
10 10 covenant as required under this section.
10 11 Sec. 12. NEW SECTION. 455L.8 RECORDING.
10 12 1. An environmental covenant and any amendment or
10 13 termination of the environmental covenant shall be recorded in
10 14 every county in which any portion of the real property subject
10 15 to the environmental covenant is located. For purposes of
10 16 indexing, a holder shall be treated as a grantee.
10 17 2. Except as otherwise provided in section 455L.9,
10 18 subsection 4, an environmental covenant is subject to the laws
10 19 of this state governing recording and priority of interests in
10 20 real property.
10 21 3. After the recording of the environmental covenant, each
10 22 instrument transferring an interest in the area affected by
10 23 the environmental covenant shall include a specific reference
10 24 to the recorded environmental covenant.
10 25 Sec. 13. NEW SECTION. 455L.9 DURATION == AMENDMENT BY
10 26 COURT OR DEPARTMENT ACTION.
10 27 1. An environmental covenant is perpetual unless any of
10 28 the following occurs:
10 29 a. The environmental covenant, by its terms, is limited to
10 30 a specific duration or terminated by the occurrence of a
10 31 specific event.
10 32 b. The environmental covenant is terminated by consent
10 33 pursuant to section 455L.10.
10 34 c. The environmental covenant is terminated pursuant to
10 35 subsection 2 or 3.
11 1 d. The environmental covenant is terminated by foreclosure
11 2 of an interest that has priority over the environmental
11 3 covenant.
11 4 e. The environmental covenant is terminated or modified in
11 5 an eminent domain proceeding, but only if all of the following
11 6 occur:
11 7 (1) The agency that signed the document, if any, is a
11 8 party to the proceeding.
11 9 (2) Each person that signed the environmental covenant and
11 10 the current property owner are given notice of the pendency of
11 11 the proceeding.
11 12 (3) The court determines, after hearing, that the
11 13 termination or modification will not adversely affect human
11 14 health and safety or the environment.
11 15 2. If the agency that signed an environmental covenant is
11 16 a state agency and has determined that the intended benefits
11 17 can no longer be realized and the underlying regulatory
11 18 purpose is no longer necessary to protect human health,
11 19 safety, and the environment, the agency may terminate the
11 20 environmental covenant or reduce its burden on the real
11 21 property subject to the environmental covenant. Notice shall
11 22 be provided to each person that signed the covenant or their
11 23 assignee, to the current property owner, and to any other
11 24 persons identified in section 455L.10, subsection 1. The
11 25 agency's determination or failure to make a determination upon
11 26 request shall constitute final agency action. Any person
11 27 entitled to notice by the agency shall be entitled to judicial

11 28 review pursuant to section 17A.19 with the following
11 29 exceptions:

11 30 a. Proceedings for judicial review shall be filed in the
11 31 county in which the environmental covenant was recorded.

11 32 b. Notwithstanding section 17A.19, subsection 2, service
11 33 of process shall not be jurisdictional and shall be as
11 34 provided in the Iowa rules of civil procedure.

11 35 c. Notwithstanding section 17A.19, subsection 3, a
12 1 petition for judicial review shall be filed within thirty days
12 2 of the written decision by the agency. Such filing shall be
12 3 jurisdictional.

12 4 d. The district court shall hear and consider relevant
12 5 evidence, including testimony or other evidence not considered
12 6 by the agency, regarding the question of whether the
12 7 environmental covenant should be terminated or the burden on
12 8 the real estate reduced if, based on changed circumstances,
12 9 the court determines the intended benefits of the
12 10 environmental covenant can no longer be realized and the
12 11 underlying regulatory purpose is no longer necessary to
12 12 protect human health, safety, and the environment.

12 13 3. If the agency that signed an environmental covenant is
12 14 a federal agency, the agency's determination or failure to
12 15 make a determination as provided in subsection 2 shall be
12 16 reviewable in accordance with applicable federal law.

12 17 4. Except as otherwise provided in subsections 1, 2, and
12 18 3, an environmental covenant may not be extinguished, limited,
12 19 or impaired through issuance of a tax deed, foreclosure of a
12 20 tax lien, or application of the doctrine of adverse
12 21 possession, prescription, abandonment, waiver, lack of
12 22 enforcement, or acquiescence, or a similar doctrine.

12 23 5. An environmental covenant may not be extinguished,
12 24 limited, or impaired by application of section 558.68 or
12 25 sections 614.24 through 614.38.

12 26 Sec. 14. NEW SECTION. 455L.10 AMENDMENT OR TERMINATION
12 27 BY CONSENT.

12 28 1. An environmental covenant may be amended or terminated
12 29 by consent only if the amendment or termination is signed by
12 30 all of the following:

12 31 a. The agency, unless it is an environmental response
12 32 project as defined in section 455L.2, subsection 5, paragraph
12 33 "e".

12 34 b. The current owner in fee simple of the real property
12 35 subject to the environmental covenant.

13 1 c. Each person that originally signed the environmental
13 2 covenant or an assignee of an original signatory, unless the
13 3 person waived in a recorded document the right to consent or
13 4 the agency finds that the person no longer exists or cannot be
13 5 located or identified with the exercise of reasonable
13 6 diligence.

13 7 d. Except as otherwise provided in subsection 4, paragraph
13 8 "b", the holder.

13 9 2. If an interest in real property is subject to an
13 10 environmental covenant, the interest is not affected by an
13 11 amendment to the environmental covenant unless the current
13 12 owner of the interest consents to the amendment or has waived
13 13 in a recorded document the right to consent to amendments.

13 14 3. Except for an assignment undertaken pursuant to a
13 15 governmental reorganization, assignment of an environmental
13 16 covenant to a new holder is an amendment.

13 17 4. Except as otherwise provided in an environmental
13 18 covenant, all of the following apply:

13 19 a. A holder may not assign its interest without consent of
13 20 the other parties as provided in subsection 1.

13 21 b. A holder may be removed and replaced by agreement of
13 22 the other parties specified in subsection 1.

13 23 c. A court of competent jurisdiction may fill a vacancy in
13 24 the position of holder.

13 25 Sec. 15. NEW SECTION. 455L.11 ENFORCEMENT OF
13 26 ENVIRONMENTAL COVENANT.

13 27 1. A civil action for injunctive or other equitable relief
13 28 for violation of an environmental covenant may be maintained
13 29 by any of the following:

13 30 a. A holder or grantor.

13 31 b. Except for environmental covenants created under
13 32 section 455L.2, subsection 5, paragraph "e", the agency or, if
13 33 it is not the agency with authority to determine or approve
13 34 the environmental response project, the department of natural
13 35 resources.

14 1 c. Any person to whom the environmental covenant expressly
14 2 grants power to enforce the environmental covenant.

14 3 d. A person whose interest in the real property or whose

14 4 collateral or liability may be affected by the alleged
14 5 violation of the environmental covenant.
14 6 e. A municipality or other unit of local government in
14 7 which the real property subject to the environmental covenant
14 8 is located.

14 9 2. This chapter does not limit the regulatory authority of
14 10 an agency under law other than this chapter with respect to an
14 11 environmental response project.

14 12 3. A person is not responsible for or subject to liability
14 13 for environmental remediation solely because it has the right
14 14 to enforce an environmental covenant.

14 15 Sec. 16. NEW SECTION. 455L.12 RELATION TO ELECTRONIC
14 16 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

14 17 This chapter modifies, limits, or supersedes the federal
14 18 Electronic Signatures in Global and National Commerce Act, 15
14 19 U.S.C. } 7001 et seq., but does not modify, limit, or
14 20 supersede section 101(a) of that Act, 15 U.S.C. } 7001(a), or
14 21 authorize electronic delivery of any of the notices described
14 22 in section 103(b) of that Act, 15 U.S.C. } 7003(b).

14 23 EXPLANATION

14 24 This bill creates the uniform environmental covenants Act
14 25 in new Code chapter 455L.

14 26 The bill provides that any person may be a holder of an
14 27 environmental covenant, that an environmental covenant may
14 28 identify more than one holder, and that the interest of a
14 29 holder is an interest in real property. The bill provides
14 30 that a state or federal agency is bound by any obligation it
14 31 assumes in an environmental covenant, but the agency does not
14 32 assume obligations merely by signing an environmental
14 33 covenant, and that any other person that signs an
14 34 environmental covenant is bound by the obligations the person
14 35 assumes in the environmental covenant, but signing the
15 1 environmental covenant does not change obligations, rights, or
15 2 protections granted or imposed under law other than this bill
15 3 except as provided in the environmental covenant. The bill
15 4 provides rules regarding the subordination of interests in
15 5 real property in relation to environmental covenants.

15 6 The bill provides the requirements for what must be
15 7 contained in an environmental covenant and provides that an
15 8 environmental covenant may contain other information,
15 9 restrictions, and requirements agreed to by the persons who
15 10 sign the environmental covenant. The bill provides that an
15 11 agency may require those persons specified by the agency who
15 12 have interests in the real property to sign the environmental
15 13 covenant.

15 14 The bill provides that an environmental covenant that
15 15 complies with the new Code chapter runs with the land and that
15 16 an environmental covenant that is otherwise effective is valid
15 17 and enforceable even if the environmental covenant has certain
15 18 characteristics or effects or certain events occur. The bill
15 19 provides that an instrument that creates restrictions or
15 20 obligations with respect to real property that was recorded
15 21 before the effective date of this bill is valid and
15 22 enforceable. The bill does not apply in any other respect to
15 23 such an instrument. The bill does not invalidate or render
15 24 unenforceable any interest that was created prior to the
15 25 enactment of this bill or that is otherwise enforceable under
15 26 the law of this state.

15 27 The bill does not authorize a use of real property that is
15 28 otherwise prohibited by zoning, by other law, or by a recorded
15 29 instrument that has priority over the environmental covenant.
15 30 The bill provides that an environmental covenant may prohibit
15 31 or restrict uses of real property which are authorized by
15 32 zoning or by law other than the new Code chapter.

15 33 The bill provides notice requirements regarding who should
15 34 receive a copy of the environmental covenant, but the validity
15 35 of an environmental covenant is not affected by failure to
16 1 provide a copy as required.

16 2 The bill provides that an environmental covenant and any
16 3 amendment or termination of the environmental covenant must be
16 4 recorded in every county in which any portion of the real
16 5 property subject to the environmental covenant is located.

16 6 The bill provides that an environmental covenant is
16 7 perpetual unless the environmental covenant is limited to a
16 8 specific duration or terminated by the occurrence of a
16 9 specific event, by consent, by foreclosure of an interest that
16 10 has priority over the environmental covenant, by an eminent
16 11 domain proceeding, or through other means allowed under the
16 12 bill. The bill provides that if a state agency determines
16 13 that the restrictions contained in an environmental covenant
16 14 are no longer necessary, the agency may terminate the

16 15 environmental covenant or reduce its burden on the real
16 16 property after providing notice to each person that signed the
16 17 environmental covenant and the current property owner. The
16 18 bill provides that a person that signed an environmental
16 19 covenant or a current property owner may seek approval from
16 20 the agency for the termination or modification of an
16 21 environmental covenant and may seek judicial review of an
16 22 adverse determination. If a federal agency has regulatory
16 23 authority over the environmental response project, applicable
16 24 federal law will apply to judicial review of an adverse
16 25 determination. The bill provides that, except as otherwise
16 26 provided, an environmental covenant may not be extinguished,
16 27 limited, or impaired through issuance of a tax deed,
16 28 foreclosure of a tax lien, or application of certain real
16 29 property doctrines.

16 30 The bill provides that an environmental covenant may be
16 31 amended or terminated by consent only if the amendment or
16 32 termination is signed by the agency, unless the project is
16 33 conducted by a person on the person's own land; the current
16 34 owner in fee simple of the real property subject to the
16 35 environmental covenant; each person that originally signed the
17 1 environmental covenant, unless the person waived in a signed
17 2 record the right to consent or the agency finds that the
17 3 person no longer exists or cannot be located or identified;
17 4 and except as otherwise provided, the holder. The bill
17 5 provides that if an interest in real property is subject to an
17 6 environmental covenant, the interest is not affected by an
17 7 amendment to the environmental covenant unless the current
17 8 owner of the interest consents to the amendment or has waived
17 9 in a signed record the right to consent to amendments. The
17 10 bill provides that, except for an assignment undertaken
17 11 pursuant to a governmental reorganization, assignment of an
17 12 environmental covenant to a new holder is an amendment. The
17 13 bill provides that, except as otherwise provided in an
17 14 environmental covenant, a holder may not assign its interest
17 15 without consent of the other parties, a holder may be removed
17 16 and replaced by consent and agreement of the other parties,
17 17 and a court of competent jurisdiction may fill a vacancy in
17 18 the position of holder.

17 19 The bill provides that a civil action for injunctive or
17 20 other equitable relief for violation of an environmental
17 21 covenant may be maintained by the holder or grantor of the
17 22 environmental covenant, the applicable agency or the
17 23 department of natural resources, any person to whom the
17 24 environmental covenant expressly grants power to enforce, a
17 25 person whose interest in the real property or whose collateral
17 26 or liability may be affected by the alleged violation of the
17 27 environmental covenant, or a unit of local government in which
17 28 the real property subject to the environmental covenant is
17 29 located. The bill provides that a person is not responsible
17 30 for or subject to liability for environmental remediation
17 31 solely because the person has the right to enforce an
17 32 environmental covenant.

17 33 The bill provides for the applicability of certain
17 34 provisions of the federal Electronic Signatures in Global and
17 35 National Commerce Act.

18 1 The bill makes certain amendments to the Code due to the
18 2 adoption of the uniform environmental covenants Act. The bill
18 3 requires the director of the department of natural resources,
18 4 at the discretion of the director, to enter into environmental
18 5 covenants. The bill includes environmental covenants as a
18 6 factor in the rulemaking process for corrective action
18 7 response requirements for releases of a regulated substance in
18 8 connection with an underground storage tank.

18 9 The bill makes amendments to the land recycling and
18 10 environmental remediation standards Act in Code chapter 455H
18 11 by including a definition of an environmental covenant. The
18 12 bill provides that an institutional or technological control
18 13 includes an environmental protection easement filed prior to
18 14 the effective date of the bill or an environmental covenant.
18 15 The bill makes conforming amendments to Code chapter 455H in
18 16 relation to allowing environmental covenants to take the place
18 17 of environmental protection easements as one possible
18 18 institutional or technological control under the Code chapter.

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